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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)
)
)

Application of SBC Communications, Inc.,)
Pursuant to Section 271 of the)
Telecommunications Act of 1996 to provide)
In-Region, InterLATA Services in California)
)
)
_____)

WC Docket No. 02-306

DECLARATION OF EVA FETTIG

1. My name is Eva Fettig. I am District Manager of Production Support and Supplier Management in AT&T's Local Services and Access Management, SBC Region. My business address is 795 Folsom Street, San Francisco, California. As District Manager for AT&T's Production Support and Supplier Management in the SBC Region Local Services and Access Management Organization, I work on a number of UNE-L, UNE-P, LNP and billing activities for our Consumer, Business, and Broadband organizations. I am involved in negotiating interconnection agreements and analyzing any of SBC's local regulatory filings, including 271 applications. I lead a team whose mission is to project manage ordering, provisioning, and maintenance processes where products are leased from SBC. In 1989, I received a Bachelor of Science degree from the University of Vermont. I majored in Marketing and had concentrations in Finance and Mathematics. In 1994, I received a Master of Business Administration degree from the

University of Illinois at Urbana - Champaign. I concentrated in Strategy and Marketing.

2. The purpose of this declaration is to describe Pacific's recent attempts to change its interconnection agreements in California to withdraw nondiscriminatory access to combinations of unbundled network elements ("UNEs"). Pacific's proposals are severely anticompetitive and undermine its commitment to provide access to UNE combinations.
3. Both the FCC and the California Public Utilities Commission ("CPUC") require Pacific to provide nondiscriminatory access to "new" combinations of UNEs, including the UNE Platform ("UNE-P"). In addition to the general rule that ILECs must provide elements in combination (47 C.F.R. § 51.315(a)) and that the ILEC "shall not separate requested network elements that the incumbent LEC currently combines" (47 C.F.R. § 51.315(b)), Rule 315(c) of the FCC's rules further specifies that an ILEC must provide UNE combinations "even if those elements are not ordinarily combined in the incumbent LEC's network," provided that such combinations are "technically feasible" and "would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network." 47 C.F.R. § 51.315(c).
4. The ILECs, including Pacific, sought judicial review of the entirety of Rule 315 after it was first promulgated in 1996. They initially met success; the Eighth Circuit vacated the entire rule in 1997. The Supreme Court, however, reversed the Eighth Circuit and reinstated subsections (a) and (b) of Rule 315 in 1999. On remand, the Eighth Circuit

again vacated Rule 315(c) in 1999, and new entrants again sought review in the Supreme Court. The Ninth Circuit, however, independently rejected Pacific's arguments in 1999. *See U S WEST Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1121 (9th Cir. 1999).

5. While Supreme Court review of Rule 315(c) was pending, the CPUC independently ruled in 2000 that Pacific was required to provide new combinations. The CPUC based its decision on both the federal rule (which was still before the Supreme Court) and on California law. Although Pacific appealed the CPUC's decision to federal district court (*see* 47 U.S.C. § 252(e)), Pacific provided "new" combinations to AT&T on the same terms as "existing" combinations, pursuant to its interconnection agreement.
6. On May 13, 2002, the Supreme Court reversed the Eighth Circuit again and reinstated Rule 315(c). *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646 (2002). The Court clarified that ILECs do not have a statutory right to "[sit] on their hands" and insist that the new entrant perform the physical combining of elements. *Id.*, 122 S.Ct. at 1684-85. Indeed, the Court found that the requirement that the ILEC perform the physical combining "is justified by the statutory requirement of 'nondiscriminatory access.'" *Id.*, 122 S.Ct. at 1686. Thus, the Supreme Court's ruling should have removed all doubt that Pacific is required to provide nondiscriminatory access to all UNE combinations, whether "new" or "existing."
7. AT&T was therefore quite surprised when Pacific informed AT&T by letter on June 11, 2002, that it was invoking the change of law provisions in its interconnection agreement with AT&T, and was proposing to *restrict* access to new combinations based

on the Supreme Court's decision in *Verizon*. See Letter from Willena Hendley (SBC) to Kathleen Whiteacre (AT&T), dated June 11, 2002 (Attachment 1). Astonishingly, Pacific was invoking *Verizon* as grounds to do precisely what the Court had said Pacific could not do – *i.e.*, Pacific was now proposing that, henceforth, for “new” (as opposed to “pre-existing”) combinations, Pacific would “sit on its hands” and insist that AT&T perform the physical combining itself (or pay exorbitant new fees for Pacific to do it). Indeed, even after AT&T pointed out that California had independently imposed the new combination requirements under California law (*see* Attachment 2), and after Pacific conceded the point, Pacific continued to assert (nonsensically) that the “appeal (of the FCC's rules) has now been resolved by the United States Supreme Court and SBC Pacific Bell has the right to under the Supreme Court Opinion to ensure that combining language is at least consistent with the Opinion.” See Letter from Mike Kollmeyer (SBC) to Kathleen Whiteacre (AT&T), dated July 26, 2002 (Attachment 3).

8. It should be noted that not long afterward, on August 6, 2002, the federal district court in California upheld the AT&T/Pacific interconnection agreement's new combination provisions and expressly repudiated any suggestion that the *Verizon* decision changed Pacific's obligations. The court expressly concluded that “[t]here is no evidence that the CPUC, in any decision before the Court, has required Pacific to combine elements in a manner that is broader than that required by the FCC's combination rules, which have been approved by the Supreme Court in *Verizon*.” *AT&T Comm. of Cal., Inc. v. Pacific Bell Tel. Co.*, Case No. C01-02517CW, slip op. at 42 (N.D. Cal. Aug. 8, 2002). Indeed, the court emphasized that “the combination requirement enunciated by the CPUC in the OANAD decision, and applied in the Arbitration Decision” – *i.e.*, the rule

that Pacific must physically combine UNEs whether the combination is “new” or “existing” – “is consistent with the Act and the FCC’s combination rules.” *Id.* at 42-43. And the court further noted that the CPUC had independently imposed such requirements under California law. *Id.* at 43 n.20.

9. Notwithstanding the clear error of its position, Pacific continues to invoke the change of law provision and is actively seeking to withdraw nondiscriminatory access to new combinations in all thirteen SBC states, including California. Pacific has provided its proposed amended contract language (the redlined “UNE Attachment,” attached hereto as Attachment 4), and if adopted, it would impose severely anticompetitive restrictions on the availability of new combinations.
10. Under Pacific’s proposal, the interconnection agreement would create a new distinction between “Pre-Existing Combinations,” which would be deemed not subject to Rule 315(c), and other, new “Combinations” that would be deemed subject to Rule 315(c). Pacific’s proposed contract language defines “Pre-Existing Combinations” as “a combination where no physical work is required by Pacific at a Pacific premises, an outside plant location, or a customer premises, in order to establish physical connections between the UNEs that constitute the UNE combination.” UNE Attachment § 3.3.1. Pacific’s proposed amendment would further specify that a “Pre-Existing Combination” would include all of the Pacific UNEs required to (1) “convert to a combinations [*sic*] of UNEs a Pacific end user customer, another carrier’s pre-existing end user customer served exclusively using UNEs, or AT&T’s or another carrier’s resale end user customer,” or (2) to convert other existing combinations of unbundled loop and switching, if Pacific can activate the combination for AT&T “(a)

without any change in the features or functionality that was being provided at the time of the order,” and/or (b) the only change needed involves customized routing of OS/DA, and/or (c) the only changes needed are to change “a local switching feature resident and activated in the serving switch and available to the switch port class used to provide the service, e.g., call waiting for residential local service,” and/or (d) “with only the work and/or changes needed to activate that Pre-Existing Combination,” and/or (e) at the time of the order, the end user is not served by a line sharing arrangement or the “technical equivalent, e.g., the loop facility is being used to provide both a voice service and an xDSL service.”

11. In other words, Pacific’s new burdensome restrictions would apply to a large group of UNE-P customers – e.g., all new customers without a pre-existing line, all new second lines, all existing Pacific customers who currently purchase DSL services in addition to voice services, and (to an extent not yet clarified by Pacific) customers who request different features when they switch to AT&T. Thus, Pacific has defined “new” combinations subject to Rule 315(c) broadly.
12. Under Pacific’s new policies, provisioning of “new” combinations would occur in one of two basic ways. First, “if the UNEs sought to be combined are available to AT&T . . . at a Pacific premises where AT&T is physically collocated or has an on-site adjacent collocation arrangement,” AT&T would be “deemed able to make a combination itself.” See UNE Attachment § 3.6. In such circumstances, Pacific would require AT&T to perform the physical combination of elements itself in its collocation.

13. Thus, for example, AT&T would be required to make its own UNE-P combination by combining the *Pacific* loop and the *Pacific* switch in the AT&T collocation cage. Such a requirement would substantially raise AT&T's costs, as well as cause unnecessary service outages and other negative impacts on service quality that inevitably occur when such functions are performed. Indeed, there is no conceivable justification for such a requirement except to impose anticompetitive costs on new entrants.
14. These procedures would be even more burdensome and discriminatory if AT&T is going to provide both DSL and voice services to the customer through a line splitting arrangement. Under the current procedure, AT&T has pre-wired cables extending from its collocation cage to the MDF to establish a connection with the AT&T DSLAM for provision of DSL service in conjunction with UNE-P. When AT&T wins a customer, Pacific ties down the cable at the MDF to establish the DSL connection. This operation takes an extremely short amount of time and creates no appreciable service disruption.
15. Under the new procedures, however, Pacific will not tie down the cable; rather, Pacific would simply deliver the stand-alone loop and port on a set date, with no effort to coordinate the cutover. Pacific has indicated that each item could be delivered to our collocation arrangement at any time on that day, not necessarily at the same time, and Pacific has no mechanism for communicating to CLECs when the delivery is complete. Clearly, this procedure would put customers out of service for extended periods of time if not a full day. Not only would such a procedure impose substantial costs on AT&T and service disruptions on AT&T's customers, it would be blatantly discriminatory. Pacific uses the same type of pre-wired cables to establish the connection to its own DSL customers, and Pacific technicians naturally will perform the coordinated tie-down

for Pacific's own customers. Its refusal to do so for AT&T would place AT&T at a substantial competitive disadvantage.

16. In those circumstances where the CLEC is not physically collocated at the premises where the UNE combination is to take place, Pacific will perform the combining, but only under burdensome and discriminatory conditions. *See* UNE Attachment § 3.3.¹ If the combination is one that is included on Pacific's "Schedule – UNE Combinations (California)" – which has yet to be provided – AT&T must order such combinations through "appropriate service requests," and Pacific will charge the "applicable service order charges," as well as all "recurring and nonrecurring charges for each individual UNE and cross connect ordered." UNE Attachment § 3.3.4. Pacific will *also* charge AT&T "a fee(s) for work performed by Pacific in providing the new combinations." UNE Attachment § 3.3.5. For such work that may be required under federal or state rules, Pacific will charge "Time and Material charges as reflected in State-specific pricing." For all other work, Pacific will charge a "market-based rate." *Id.* These "glue charges" constitute blatant double recovery, because time and material charges are already reflected in the nonrecurring charges for each element.

17. If the combination is not on the Schedule, AT&T must order the combination through the lengthy and burdensome Bona Fide Request ("BFR") process. UNE Attachment § 3.4. As with combinations on the Schedule, Pacific will assess the same redundant "glue charges" – both time and material charges and other "market-based charges" for

¹ And only for the time being. When and if Pacific can secure further "clarification" of what it perceives to be the new, more limited scope of its obligations under Rule 315(c), it reserves the right to withdraw even this offer. *See* UNE Attachment § 3.3.2.

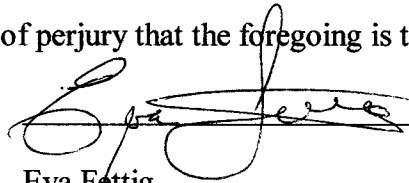
performing the combining work – in addition to “any other applicable charges.” *Id.* § 3.4.2.

18. Furthermore, in all of these situations, Pacific further reserves the right to refuse to make new combinations available (either for AT&T or Pacific to combine) if one of several conditions are met, including whether “Pacific’s ability to retain responsibility for the management, control, and performance” would be “impaired,” and whether Pacific would be “placed at a disadvantage in operating its own network.” UNE Attachment § 3.5.3 & 3.5.4. These are broadly worded restrictions, and in any particular situation Pacific would of course judge these matters in the first instance. If AT&T disagreed, it would be forced to resort to dispute resolution mechanisms – by which time it would have long lost the customer.
19. In addition, Pacific has recently made clear that, in its view it has no obligation to build facilities to complete a new combination. This is also blatantly discriminatory. Pacific has an existing, ubiquitous network, in which Pacific has built feeder loop plant (with substantial extra capacity) that extends to virtually every location and neighborhood in its service area. With rare exceptions, Pacific can serve any new location simply by making incremental (and inexpensive) modifications to its existing plant. Equally important, Pacific would make those modest modifications for itself, if Pacific won the customer. The statutory mandate of nondiscrimination requires that Pacific do the same for CLECs.
20. All of these restrictions would deal a death blow to UNE-P competition as well as to the already-tenuous competition from DSL providers. It is crucial to successful entry

that the public perceives a CLEC as being able to offer a full range of high quality services. If there is a "gap" in the services a CLEC can offer, customers will tend to remain with the incumbent, even if they are not affected by the gap. In other words, not only would Pacific's policies render CLECs unable to serve large swaths of the local market, it would also establish a reputation for CLECs as something less than full-service providers.

21. Indeed, under Pacific's procedures, AT&T would have no way of knowing whether any given order would constitute a "new" or "pre-existing" combination until AT&T actually *submitted the order and had it rejected*. Thus, if AT&T were actually to continue entry under these conditions, it would be constantly placed in the position of winning a customer then finding out that it could not serve the customer after all. This would obviously have a further severe impact on AT&T's reputation as a full-service provider.
22. In short, Pacific's new procedures have no grounding in any engineering or economic realities of the network. Their sole purpose and effect is to drive up CLECs' costs to the point where they cannot compete. Pacific's proposal is a half-baked, unworkable system derived solely from a bizarre – indeed, willful – misreading of the Supreme Court's decision in *Verizon*. Pacific's persistence in invoking the change of law provisions and seeking to amend all of its interconnection agreements, however, has undermined its legal commitments to provide UNE combinations in accordance with the statute and the Commission's rules, and as a result Pacific has not satisfied checklist item two, which requires nondiscriminatory access to unbundled network elements.


I, Eva Fettig, declare under penalty of perjury that the foregoing is true and correct.

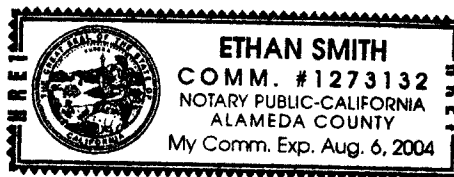

Eva Fettig

Executed on October ⁷~~8~~, 2002.

Subscribed and sworn to before me

This 08th day of OCT, 2002

 Notary Public



Attachment 1

SBC Telecommunications, Inc.
Contract Management
Four SBC Plaza, 8th Floor
311 S. Akard
Dallas, TX 75202-5398



June 11, 2002

Kathleen Whiteaker
AT&T Communications of California, Inc.
809 Cobblestone Ct.
Cedar Hill, TX 75104

Re: Notice under Section 8.3 of the Agreement between Pacific Bell Telephone Company ("SBC Pacific Bell") and AT&T Communications of California, Inc. ("CLEC"), Effective Date August 14, 2000 ("Interconnection Agreement")

Dear Kathleen Whiteaker:

Pursuant to Section 8.3 of the General Terms and Conditions of the Interconnection Agreement, SBC Pacific Bell hereby invokes its right to engage with CLEC in renegotiations of certain material terms of the Interconnection Agreement in order to make them consistent with the May 13, 2002 opinion issued by the United States Supreme Court in *Verizon Communications, Inc. v. FCC*, Nos. 00-511, 00-555, 00-587, 00-590, 00-602, 2002 U.S. Lexis 3559 as it relates to combinations of network elements.²³ Section 8.3 requires that this notice be delivered "not later than thirty (30) days following the date on which such action [i.e. the opinion] has become legally binding," and defines "legally binding" to mean "that the legal ruling has not been stayed; no request for a stay is pending and if any deadline for requesting a stay is designated by statute or regulation, it has passed." Because the legal action in question here is a United States Supreme Court opinion, subject to unique procedural rules, this definition could be interpreted to mean that notice would have to be given within 30 days of the issuance of the Court's opinion on May 13, 2002. Accordingly, SBC Pacific Bell believes it is prudent to provide this notice now rather than later. SBC Pacific Bell will contact CLEC when it is ready to begin negotiations of affected terms.

Sincerely,

A handwritten signature in cursive script that reads "Willena Hendley".

Willena Hendley
Director-Contract Management

²³ SBC Pacific Bell acknowledges that an appeal of the arbitrated combinations provisions of the Interconnection Agreement is presently pending before the United States District Court for the Northern District of California arising out of the California Public Utility Commission's decision in *Application of AT&T Communications of California, Inc. (U 5002 C)*, et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996 (CPUC Application No. 00-01-022). See *AT&T Comm. of Cal. Inc. v. Pacific Bell Tele. Co.*, Case No. C01-02517CW (N.D. Cal.).

Attachment 2



Kathleen Whiteaker
District Manager-Local Negotiations
Southwest, SNET and Pacific Region

809 Cobblestone Ct.
Cedar Hill, TX 75104
972-293-8608
kwhiteaker@ems.att.com

June 14, 2002

Via Airborne Express

Ms Willena Hendley
SBC Telecommunications, Inc.
Four Bell Plaza, 8th Floor
311 S. Akard
Dallas, Texas 75202-5398

Re: "SBC Pacific Bell" June 11, 2002 letter stating notice under Section 8.3
of its Agreement with AT&T Communications of California, Inc.

Dear Ms. Hendley:

I am in receipt of your letter dated June 11, 2002 announcing SBC Pacific Bell's opinion that it may invoke the change of law provision in interconnection agreements into which it has entered with CLECs to initiate renegotiation of certain provisions. Your letter cites to the recent U.S. Supreme Court decision in Verizon Communications, Inc. v. FCC, 535 U.S. ____, 2002.

The Public Utilities Commission of California ("California Commission") has independent authority under federal and state law to require SBC Pacific Bell to provide unbundled network elements to CLECs. For example, in the Final Arbitrator's Report in the AT&T/Pacific Bell arbitration case that was entered on June 13, 2000, the California Commission cited to its OANAD pricing decision in which it reaffirmed its authority under Pub. Util. Code Section 709.2(c)(1) to order ILECs to combine separate UNEs upon the request of a telecommunications carrier, or to order an ILEC to combine additional UNEs with an existing UNE platform.¹

¹ Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Application 00-01-022, Filed January 24, 2000, pp. 109-119.

The law in California has not changed on this issue.² As a result, AT&T disagrees that on the basis of this recent decision, SBC Pacific Bell may invoke the change of law provision pursuant to its interconnection agreement with AT&T in California.³

Sincerely,

Kathleen Whiteaker
District Manager

CC: R. Douglas, AT&T
E. Larsen, SBC

² Even under federal law, the change of law provisions would not be triggered because the language in the California interconnection agreement is consistent with the FCC's rules governing UNE combinations which, as you know, were affirmed by the U.S. Supreme Court decision.

³ AT&T reserves its right to challenge whether SBC Pacific Bell's June 11, 2002 letter complies with the notice provisions in the AT&T/Pacific Bell interconnection agreement in California.

Attachment 3



Kathleen Whiteaker
District Manager-Local Negotiations
Southwest, SNET and Pacific Region

809 Cobblestone Ct.
Cedar Hill, TX 75104
972-293-8608
kwhiteaker@ems.att.com

August 9, 2002

Via E-Mail Transmission and Airborne

Mr. Michael A. Kollmeyer, SBC Ameritech
N17 W24300 Riverwood Drive, Third Floor
Waukesha, WI 53186

Re: SBC's proposed UNE Amendment

Dear Mr. Kollmeyer:

I received your letter dated July 26, 2002 in which SBC Pacific continues to assert that it should be able to require an amendment in California concerning UNE combinations as a result of the recent U.S. Supreme Court order.¹ AT&T disagrees. As a result of our disagreement, this letter serves as AT&T's request to escalate this dispute to the Inter-Company Review Board as described in Attachment 3 of the AT&T/Pacific California interconnection agreement.

First, I must say that SBC's proposed UNE amendment for addressing combinations has turned the U.S. Supreme Court *Verizon* order on its head. *Verizon* affirms your obligation to combine UNEs and reinstates the FCC's rules requiring you to combine. Despite that fact, the amendment is written such that your obligation to combine is almost lost in the SBC Pacific-asserted "exceptions" to your combining obligation. AT&T will not agree to language that obscures what the law requires you to do.

The U.S. Supreme Court's *Verizon* order reinstated the FCC's combinations rules that require SBC Pacific and other incumbent local exchange carriers to combine network elements. In addition, even before the U.S. Supreme Court in *Verizon* confirmed your obligation to combine network elements, the California Public Utilities Commission held that it has the authority under state law to require SBC Pacific to combine elements. In the California Public Utilities Commission's OANAD order (D.99-11-050, at page 263), it stated:

¹ *Verizon Communications Inc., et al. v. Federal Communications Commission et al.*, 535 U.S. _____, (May 13, 2002) (referred to here as "*Verizon*")

“Notwithstanding the current uncertainty surrounding the status of FCC Rules 315(c)-(f), this Commission has the authority under Pub. Util. Code Section 709.2(c)(1) to order ILECs to combine separate UNEs upon the request of a telecommunications carrier, or to order an ILEC to combine additional UNEs with an existing UNE platform.

So, even without a U.S. Supreme Court order, SBC Pacific has continuously had the obligation to combine elements in California and the language in the AT&T/Pacific interconnection agreement is not inconsistent with the obligation you have continuously had.

In addition, a recent decision by the U.S. District Court for the Northern District of California affirms that the AT&T/SBC Pacific interconnection agreement is consistent with the FCC’s reinstated rules.² The District Court in that case stated that... “Pacific’s argument that the CPUC’s combination requirements are broader than the FCC rule is not well-taken.” Further, the District Court on page 42 of that decision, points to language in the AT&T/SBC Pacific interconnection agreement stating that Pacific agrees to offer combinations in accordance with its obligations under Section 251(c)(3) of the Act and Applicable Laws. Also on p. 42 of the decision, the District Court firmly supports the California Commission’s authority to require Pacific to combine elements by holding that its decisions have been consistent with the FCC’s combinations rules. The District Court stated that there is no evidence that the California Commission has required Pacific to combine elements in a manner that is broader than that required by the FCC’s combination rules, which have been approved by the Supreme Court in *Verizon*.

Contrary to the approach SBC Pacific has taken with its proposed UNE combinations amendment, it is not appropriate to include in contract language every conceivable reason for your refusal to combine. Instead, when SBC Pacific denies a request for a combination, you presumably will assert those restrictions along with whatever basis you wish to put forth for those restrictions in your denial and in the dispute resolution proceedings that likely will flow from that denial.

Please call me to schedule the meeting of the Inter-Company Review Board.

Sincerely,

Kathleen Whiteaker
District Manager- Negotiations

² *AT&T Communications of California, Inc. v. Pacific Bell Telephone Company*, No. C 01-02517 CW, pp. 40-44, U. S. District Court for the Northern District of California, (August 6, 2002).

Attachment 4

ATTACHMENT 6

SPECIFICATIONS, SERVICE DESCRIPTIONS, AND IMPLEMENTATION
SCHEDULE FOR UNBUNDLED NETWORK ELEMENTS AND COMBINATIONS

MODIFIED 071802 TO REFLECT SUPREME
COURT *VERIZON* OPINION

DRAFT

ATTACHMENT 6
SPECIFICATIONS, SERVICE DESCRIPTIONS, AND IMPLEMENTATION
SCHEDULE FOR UNBUNDLED NETWORK ELEMENTS AND COMBINATIONS

1. INTRODUCTION

- 1.1. This Attachment 6 sets forth the unbundled Network Elements and Combinations of unbundled Network Elements ("Combinations") that PACIFIC agrees to offer to AT&T in accordance with its obligations under Section 251(c)(3) of the Act and Applicable Laws. This reference includes, without limitation, the FCC's First Report and Order and the FCC's UNE Remand Order, as defined in Attachment 1 and as modified in subsequent proceedings, along with Verizon Communications Inc. v. FCC, 535 U.S. No. 00-511, 2002 WL970643 (May 13, 2002) ("Verizon Comm. Inc."). The specific terms and conditions that apply to the unbundled Network Elements and Combinations are described below. Prices for Network Elements and Combinations are set forth in Attachment 8 (Pricing) of this Agreement. For purposes of this Attachment 6, the terms "unbundled Network Elements," "Network Elements" and "UNEs" shall refer to PACIFIC's unbundled network elements.

2. GENERAL: UNBUNDLED NETWORK ELEMENTS AND COMBINATIONS

- 2.1. Access to Unbundled Elements shall be specified herein and not presumed. The Network Elements offered under this Agreement shall be clearly specified in this Agreement or the attachments hereto. In no event will it be presumed that access to a Network Element is offered unless so specified. PACIFIC will make available any other form of access requested by AT&T that is required by the Act and the regulations thereunder. Requests for Network Elements not specified in this Attachment shall be processed according to the process described in Section 22 (Bona Fide Request) of the Preface (General Terms and Conditions) of this Agreement.
- 2.2. Consistent with the terms and conditions in this Attachment, the Act and regulations thereunder, PACIFIC shall offer each Network Element individually and, in combination with any other Network Element or Network Elements in order to permit AT&T to combine such Network Element or Network Elements with another Network Element or other Network Elements obtained from PACIFIC or with network components provided by itself or by third parties to provide Telecommunications Services to its customers. With or without additional components furnished by AT&T to itself or through third parties, AT&T may combine Network Elements made

available by PACIFIC with other contiguous PACIFIC Network Elements. Combinations of unbundled Network Elements will be provided as set forth in Section 3. below, and the term "Combinations," as used in this Attachment 6 shall refer only to those Combinations described in Section 3., provided, however, that AT&T shall submit a Bona Fide Request to PACIFIC when AT&T requests PACIFIC to combine contiguous or non-contiguous Network Elements:

~~2.2.1. In a manner different than that contemplated in Section 3 and Table 1 of this Attachment 6.~~

~~2.2.2. In a manner different than that contemplated in any previous Bona Fide Request from AT&T or any other Telecommunications Carrier, or~~

~~2.2.3. In a manner different than PACIFIC has made available to any other Telecommunications Carrier.~~

2.3. AT&T may use one or more Network Elements or Combinations to provide to AT&T Customers any feature, function, capability or service option that such Network Element or Combination is technically capable of providing and that PACIFIC is required by Applicable Law to permit be provided thereby, or any feature, function, capability or service option that is described in Telcordia and other industry standard technical references that such Network Element or Combination is technically capable of providing, and that PACIFIC is required by law to permit be provided thereby. Unless required by law, Network Elements and Combinations may not be used to provide services to End Users that have not selected AT&T as their local service provider. Special access services may be converted to combinations of unbundled loops and transport Network Elements pursuant to terms and conditions consistent with the if AT&T provides a significant amount of local exchange service to a particular customer. The definition of what constitutes a "significant amount of local exchange service" is pursuant to Paragraph 22 of the FCC's Supplemental Order Clarification, *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000).

2.4. Consistent with the terms and conditions in this Attachment and the Act and regulations thereunder, PACIFIC will permit AT&T to interconnect AT&T's facilities or facilities provided by AT&T or by third parties with each of PACIFIC's Network Elements at any technically feasible point designated by AT&T.

2.5. If AT&T requests a Combination not specified in this Agreement and for which the Parties have not agreed on methods and procedures for pre-ordering, ordering, provisioning, maintenance, billing and pricing, the Parties

~~will proceed pursuant to Section 3.X4 below, meet and confer to establish the processes necessary to provide the combination. In the event the Parties can not agree on technical feasibility or any of the matters specified in the foregoing sentence, the Parties will follow the dispute resolution process set forth in Attachment 3 to the Agreement.~~

- 2.6. For each Network Element, PACIFIC shall specify a demarcation point (e.g., an interconnection point at a Digital Signal Cross Connect or Light Guide Cross Connect panel or a Main or Intermediate Distribution Frame) and, if necessary, access to such demarcation point, which is mutually agreed to by the Parties. However, where PACIFIC provides contiguous Network Elements or a continuous combination of Network Elements to AT&T, PACIFIC may provide the existing interconnections and no demarcation point shall exist between such contiguous Network Elements.
- 2.7. PACIFIC shall offer each Network Element individually ~~and in any technically feasible Combination with any other Network Element or Network Elements in order to permit AT&T to provide services to its Customers. Combinations will be provided by PACIFIC pursuant to the terms and conditions set forth in Section 3, below.~~
- 2.8. PACIFIC shall not charge AT&T an interconnection fee or demand other consideration for directly interconnecting any Network Element or Combination to any other Network Element or Combination provided by PACIFIC to AT&T. This stipulation applies if PACIFIC directly interconnects the same Network Elements or Combinations in providing any service to its own Customers or a PACIFIC affiliate, including the use of intermediate devices, such as a digital signal cross connect panel, to perform such interconnection. Pricing for Combinations will be pursuant to the terms and conditions set forth in Section 3, below.
- 2.9. When ordered in combination, Network Elements that are currently connected and that are ordered together will not be physically disconnected or separated in any other fashion except for technical reasons or if requested by AT&T. Terms and conditions for the provision of "pre-existing combinations" are set forth in Section 3.3.1, below ("Pre-Existing Combination"). Network Elements to be provisioned together shall be identified and ordered by AT&T as such. Network Elements ordered as a Combination shall be provisioned in combination unless AT&T specifies that the Network Elements ordered in combination be provisioned separately. When existing Access Service(s) employed by AT&T is replaced with a combination(s) of loop and transport, PACIFIC shall not physically disconnect or separate in any other fashion equipment and facilities employed to provide the Access Service(s) except for technical reasons or if requested by AT&T. The charge for such transitioning of

~~an existing Access Service(s) to a combination of loop and transport shall be the service order charge(s) as described in Section 2.13.2.2 of this Attachment.~~

- 2.10. In provisioning a Network Element or Pre-Existing Combination, PACIFIC shall ~~include~~provide all ancillary equipment necessary to make the Network Element or Pre-Existing Combination function as defined in this Agreement or in the technical references listed in Appendix A to this Attachment 6. If AT&T requires ancillary equipment to make a Network Element meet its stated performance specifications, the cost of the ancillary equipment will be included in the price of the Network Element. Prior to the Effective Date of this Agreement, Pacific shall provide to AT&T a written list identifying all

ancillary equipment necessary to make the Network Elements and Pre-Existing Combinations listed in this Attachment 6 and attached Table 1 function.

- 2.11. Specification of ancillary equipment (e.g., multiplexers, bridges, etc.) in an AT&T order is not an acknowledgment on the part of AT&T that the items specified represent separate Network Elements. In addition, such specification is not a waiver of any position that there should be no extra charge for the ancillary equipment but that it should be included in the price of the Network Element or Pre-Existing Combination. Whether or not AT&T specifies ancillary equipment in an order, PACIFIC shall supply, at no additional charge, all ancillary equipment necessary to make the Network Element or Pre-Existing Combination function as defined in this Agreement or in the technical references listed in Appendix A to this Attachment 6.
- 2.12. Except as noted in Section 3, below, Attachment 6, together with Attachments 9, 13 and 14, collectively describe the Operating Support System Network Element, and list the Network Elements, associated Ancillary Equipment and Combinations that AT&T and PACIFIC have identified as of the Effective Date of this Agreement. AT&T and PACIFIC agree that the Network Elements and Combinations identified in this Agreement are not exclusive. The process of requesting access to a Combination or Network Element not identified herein shall be the Bona Fide Request process set forth in Section 22 of the Preface (General Terms and Conditions) of this Agreement. If PACIFIC provides any Network Element, Combination or interconnection arrangement that is not identified in this Agreement to a requesting Telecommunications Carrier, PACIFIC will make available the same Network Element, Combination or interconnection arrangement to AT&T, without AT&T being required to use the Bona Fide Request process. Failure to list a Network Element or Combination herein shall not constitute a waiver by AT&T to obtain a Network Element or Combination subsequently ordered by the FCC or by the Commission.
- 2.13. Replacement of Services with Unbundled Network Elements
 - 2.13.1. As part of its obligation to offer unbundled Network Elements to AT&T, PACIFIC shall permit AT&T to substitute unbundled Network Elements (including Pre-Existing Combinations) providing identical functionality for any services, excluding Access Service purchased by AT&T pursuant to either contract or tariff, pursuant to Section 3.3.1.

- 2.13.2. Any substitution of Network Elements (including Pre-Existing Combinations) for services shall be subject to all of the requirements of this Attachment 6 applicable to purchase of Network Elements and Pre-Existing Combinations of Network Elements, and shall include without limitation the following:
- 2.13.2.1. When AT&T replaces any existing service with Network Elements (including Pre-Existing Combinations), PACIFIC shall not physically disconnect, separate, alter or change in any other fashion equipment and facilities employed to provide the service being replaced, except at the request of AT&T.
- 2.13.2.2. Charges for the conversion of an existing service to Network Elements (including Pre-Existing Combinations) shall be limited to PACIFIC's total element long-run incremental service order charges . These charges shall be limited to PACIFIC's necessary accounting of AT&T's continuing purchase of the functionality in the form of Network Elements pursuant to this Agreement. The charges shall not include charges for any other functions, including without limitation nonrecurring charges that would otherwise apply to orders for Network Elements that are newly installed.
- 2.13.3 AT&T may request the conversion of any existing service, excluding special access, to Network Elements (including Pre-Existing Combinations) by submitting a written or electronic notice to PACIFIC. This information will include, if applicable, the circuit identification or other information sufficient to identify the services to be converted. AT&T may request any number of conversions in a single notice. AT&T shall not be required to submit Local Service Requests or separate requests for each service to be converted. PACIFIC shall facilitate all conversions requested by AT&T without disruption of service. If AT&T sends a written notice, rather than a mechanized service order, AT&T will be subject to a manual service charge for the service migration.
- 2.13.4. PACIFIC agrees that with respect to all unbundled Network Elements (including Pre-Existing Combinations) substituted for services:

2.13.4.1 Recurring charges for unbundled Network Elements substituted for services shall apply as of the following dates:

Except where AT&T specifically requests that PACIFIC physically disconnect, separate, alter or change the equipment and facilities employed to provide the service being replaced, the conversion order shall be deemed to have been completed effective upon receipt by PACIFIC of notice from AT&T, and recurring charges set forth in Attachment 8 to this Agreement applicable to unbundled Network Elements shall apply as of such date.

Where AT&T specifically requests that PACIFIC physically disconnect, separate, alter or change the equipment and facilities employed to provide the service being replaced, recurring charges set forth in Attachment 8 to this Agreement applicable to unbundled Network Elements shall apply based on the date on which PACIFIC completes the requested work.

PACIFIC shall bill AT&T pro rata for the service being replaced through the date prior to the date on which billing at unbundled Network Element rates commences pursuant to this section.

- 2.14 Notwithstanding any other provision of this Attachment 6, only UNEs which have been determined by Applicable Law to meet the "necessary" and "impair" standards of the Act (Section 251(d)(2)) will be provided under this Agreement. No UNE referred to or otherwise required by this Agreement which is determined by Applicable Law, not to meet the "necessary" and "impair" standards of the Act and that is not otherwise required by Applicable Law, shall be provided by PACIFIC to AT&T hereunder.
- 2.15 Unless specified otherwise in this Attachment, PACIFIC will make the Network Elements identified in this Agreement, and all Combinations specified herein, available on the Effective Date of this Agreement .
- 2.16 The charge(s) for Network Elements requested pursuant to Section 22 of the Preface (General Terms and Conditions) of this Agreement shall be specified by amendment to Attachment 8.
- 2.17 Implementation Costs for all Network Elements set forth in this Attachment will be determined and recovered as specified in Attachment 8.

3. COMBINATIONS

- 3.1 ~~PACIFIC shall provide to AT&T any combination of Network Elements requested by AT&T to serve its customers. The Combinations that PACIFIC agrees to provide to AT&T include those listed below. Table 1 below provides examples of additional individual Combinations that PACIFIC shall provide to AT&T.~~
- 3.1.1 ~~Enhanced Extended Loop, as defined in Section 5.2.6 of this Attachment.~~
- 3.1.2 ~~Loop with Multiplexing and/or Concentration~~
- 3.1.3 ~~Local Network Interconnection Combination: Local Switching, Tandem Switching, Dedicated Transport, Shared Transport, Common Transport, Signaling, and SCPs/Databases.~~
- 3.1.4 ~~UNE Platform utilizing PACIFIC's NIDs, loops, switching, shared and common interoffice transport, Signaling, and Databases. AT&T shall send PACIFIC two UNE Platform orders: the first is the "footprint" combination order, and the second is the "customer service" UNE-P combination order.~~
- 3.1.4.1 ~~The "footprint" combination order shall instruct PACIFIC to establish the common equipment necessary to provide Local service from a given central office. AT&T will transmit one "footprint" order for each PACIFIC central office and an associated order for each trunk group required to provide UNE-P custom routing capability.~~
- 3.1.4.2 ~~The "customer service" UNE-P order shall request that PACIFIC provide a NID, loop, switch port and associated vertical switching features for a specific AT&T Local customer. The order shall include all customer-specific custom calling and blocking features, along with directory listing information.~~
- 3.1.4.3 ~~Combining Links and LSNE with Shared Transport: AT&T may order from Pacific a Combination of link and LSNE, with routing over Shared Transport. Under this scenario, PACIFIC shall provide to AT&T, at no additional charge, a cross connection facility from PACIFIC's central office distribution frame to the Line Side Port of the switch.~~

~~3.1.4.4 Combining Links, LSNE and Dedicated Transport:
AT&T may order from Pacific a Combination consisting
of Links, the LSNE, with custom routing over Dedicated
Transport. Under this scenario, PACIFIC shall provide
to AT&T, at no additional charge, a cross-connection
facility between the link and the LSNE.~~

3.1 Subject to the provisions of this Section 3 and upon AT&T request, PACIFIC shall meet its combining obligations involving UNEs as and to the extent required by FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. _____, No. 00-511, 2002 WL 970643 (May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of the relevant State Commission and any other applicable law.

3.2 In the event that PACIFIC denies a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by AT&T, PACIFIC shall provide written notice to AT&T of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. If such dispute cannot be resolved to the mutual satisfaction of the parties, PACIFIC shall initiate a proceeding before the State commission for the State in which the combination is sought, to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.*, and the Agreement, including Section 3.1 of this Attachment 6.

3.3 In accordance with and subject to the provisions of this Section 3, including Section 3.3.2 and 3.5, the new UNE combinations set forth in the Schedule(s) – UNE Combinations attached and incorporated into this Attachment 6 shall be made available to AT&T as specified in the specific Schedule for California.

3.3.2 The parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as PACIFIC being required to perform the functions necessary to combine ILEC UNEs and to combine ILEC UNEs with elements possessed by a requesting telecommunications carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the Effective Date, there has been no further ruling or other guidance

provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, PACIFIC is willing to perform the actions necessary to also complete the actual physical combination for those new UNE combinations set forth in the Schedule – UNE Combinations (California) to this Attachment 6, subject to the following:

3.3.1 A "Pre-existing Combination" shall not be considered a new combination involving UNEs under Section 3, below. A "Pre-existing Combination" means a combination of UNEs where no physical work is required by PACIFIC at a PACIFIC premises, an outside plant location, or a customer premises, in order to establish physical connections between the UNEs that constitute the UNE combination. A Pre-existing Combination includes all orders within the definition of "Contiguous Interconnection of Network Elements."

3.3.1.1 "Contiguous Interconnection of Network Elements" means the situation when AT&T orders all the PACIFIC UNEs required either

- (1) to convert to a combinations of UNEs a PACIFIC End User customer, another carrier's pre-existing End User customer served exclusively using UNEs, or AT&T's or another carrier's resale End User customer; or
- (2) if the Pre-Existing Combination includes a local loop UNE with unbundled local switching, to activate that Pre-Existing Combination for AT&T (a) without any change in features or functionality that was being provided at the time of the order, and/or (b) the only change needed to route the operator service and directory assistance ("OS/DA") calls from the End User customer to be served by that Pre-Existing Combination to AT&T's OS/DA platform via customized routing, and/or (c) with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service, e.g., call waiting for residential local service, and/or (d) with only the work and/or changes needed to activate that Pre-existing Combination, and/or (e) at the time of the order and when the order is worked by PACIFIC, the End User customer in question is not

served by a line sharing arrangement as defined herein (or, if not so defined, by applicable FCC orders) or the technical equivalent, e.g., the loop facility is being used to provide both a voice service and also an xDSL service. (Section 3.3.1.1(2)(b) only applies to orders involving customized routing after customized routing has been established to AT&T's OS/DA platform from the relevant PACIFIC local switch, including AT&T's payment of all applicable charges to establish that routing.)

3.3.1.2 Reconfigurations of existing qualifying special access services to combinations of unbundled loop and transport upon terms and conditions consistent with the FCC's Supplemental Order Clarification, *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000), shall not be considered a new combination involving UNEs hereunder.

3.3.2 The parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as PACIFIC being required to perform the functions necessary to combine UNEs and to combine UNEs with elements possessed by a requesting telecommunications carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the Effective Date, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, PACIFIC is willing to perform the actions necessary to also complete the actual physical combination for those new UNE combinations set forth in the Schedule(s) – UNE Combinations to this Attachment 6, subject to the following:

3.3.2.1 Section 3, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, PACIFIC from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to *Verizon Comm. Inc.*, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by

PACIFIC. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect PACIFIC from taking any position with respect to combinations including UNEs or any issue or subject addressed or related thereto.

3.3.2.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's UNE combining obligations, PACIFIC shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and AT&T shall thereafter be solely responsible for any such non-included functions or other actions. This Section 3.3.2.2 shall apply in accordance with its terms, regardless of any "change of law" or "intervening law" or similarly purposed or other provision of the Agreement and, concomitantly, the first sentence of this Section 3.3.2.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.

3.3.2.3 Without affecting the application of Section 3.3.2.2 (which shall apply in accordance with its provisions), upon notice by PACIFIC, the parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, and to eliminate any PACIFIC obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

3.3.3 The inclusion of a new UNE combination in Schedule – UNE Combinations (California) does not imply or otherwise indicate the

availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.

3.3.4 For a new UNE combination in Schedule – UNE Combinations (California), AT&T shall issue appropriate service requests. These requests will be processed by PACIFIC, and AT&T will be charged the applicable UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered.

3.3.5 Upon notice by PACIFIC, the parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by PACIFIC in providing the new UNE combinations set forth in the Schedule(s) – UNE Combinations, which work is not covered by the charges applicable per Section 3.3.4. For any such work that is required to be done by PACIFIC under Section 3.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by PACIFIC, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

3.4 In accordance with and subject to the provisions of this Section 3, any request not included in Section 3.3 in which AT&T wants PACIFIC to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by AT&T (as well as requests where AT&T also wants PACIFIC to complete the actual combination), shall be made by AT&T in accordance with the bona fide request, special request, or equivalent process applicable under the Agreement (generically referred to in this Appendix as "BFR").

3.4.1 In any such BFR, AT&T must designate among other things the UNE(s) sought to be combined and the needed location(s), the order in which the UNEs and any AT&T elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an PACIFIC UNE and the network element(s) possessed by AT&T.

3.4.2 In addition to any other applicable charges, AT&T shall be charged a reasonable cost-based fee for any combining work that is required to be done by PACIFIC under Section 3.1. Such fee shall be calculated using the Time and Material charges as reflected in State-specific pricing. PACIFIC's preliminary substantive response to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which AT&T requests PACIFIC to perform work not required by Section 3.1, AT&T shall be charged a market-based rate for any such work.

3.5 Without affecting the other provisions hereof, the UNE combining obligations referenced in this Section 3 apply only in situations where each of the following is met:

3.5.1 it is technically feasible, including that network reliability and security would not be impaired;

3.5.2 PACIFIC's ability to retain responsibility for the management, control, and performance of its network would not be impaired;

3.5.3 PACIFIC would not be placed at a disadvantage in operating its own network;

3.5.4 it would not impair the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with PACIFIC's network; and

3.5.5 AT&T is

3.5.5.1 unable to make the combination itself; or

3.5.5.2 is a new entrant and is unaware that it needs to combine certain UNEs to provide a telecommunications service, but such obligation under this Section 3.5.5 ceases if PACIFIC informs AT&T of such need to combine.

3.6 For purposes of Section 3.5.5 and without limiting other instances in which AT&T may be able to make a combination itself, AT&T is deemed able to make a combination itself when the UNE(s) sought to be combined are available to AT&T, including without limitation:

3.6.1 at an PACIFIC premises where AT&T is physically collocated or has an on-site adjacent collocation arrangement;

3.6.2 for PACIFIC only, within an Adjacent Location arrangement (if provided for in the Agreement).

3.7 Section 3.5.5 shall only begin to apply thirty (30) days after notice by PACIFIC to AT&T. Thereafter, PACIFIC may invoke Section 3.5.5 with respect to any request for a combination involving UNEs.

3.8 Nothing in this Attachment 6 or the Agreement shall impose any obligation on PACIFIC to provide UNEs, combinations of UNEs, or combinations of UNE(s) and AT&T's own elements beyond those obligations imposed by the Act, including the rules and orders of the FCC and *Verizon Comm. Inc.*, and to the extent not inconsistent therewith, the rules and orders of the relevant State Commission and any other Applicable Law. The preceding includes without limitation the following:

3.8.1 The UNE combination known as an "enhanced extended loop" or "EEL" (a combination of a UNE loop and UNE dedicated transport, with appropriate Cross-Connects, and when needed, multiplexing) shall only be provided to AT&T to the extent that the EEL is used to provide a significant amount of local exchange service to a particular End User customer (this limitation is the same as the requirements set forth in the FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000));

3.8.2 PACIFIC will not connect to or combine UNEs with any non-251(c)(3) or other PACIFIC offerings with the exception of tariffed Collocation services;

3.8.3 PACIFIC need not provide combinations involving network elements that do not constitute required UNEs, or where UNEs are not requested for permissible purposes.

4. NETWORK INTERFACE DEVICE (NID)

4.1 GENERAL DESCRIPTION AND SPECIFICATIONS OF THE NETWORK ELEMENT

- 4.1.1. Description. The Network Interface Device Network Element (NID) is defined as set forth in FCC Rule 51.319. NID is PACIFIC's terminal that is used to connect the end user customer's inside wire with the telephone network. In addition, the NID is the final termination point, or DEMARC (demarcation point) in the loop network where an end user customer connects its inside wire to a telephone company's loop network. Connection to PACIFIC's NID will permit AT&T to obtain direct access to the end user customer's inside wire.
- 4.1.2. PACIFIC shall make available to AT&T the NID, which includes any means of interconnection of customer premises wiring to PACIFIC's distribution plant, such as a cross-connect device used for that purpose. The NID includes all features, functions, and capabilities of the facilities used to connect PACIFIC's distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism. The NID consists of whatever technology exists in PACIFIC's network at the time when and at the end user premises where the NID is unbundled.
- 4.1.3. Types of NID. Under this Agreement, PACIFIC shall offer access to two general types of NIDs:
 - 4.1.3.1. Simple NID, which is a standard network interface (SNI), the use of which permits the end user's customer wiring to be isolated from PACIFIC's network.
 - 4.1.3.2. Complex NID, which is a building terminal where end user customer wiring terminates on PACIFIC's network.

4.2 FORM OF ACCESS

- 4.2.1. Due to the wide variety of NIDs utilized by PACIFIC (based on subscriber size and environmental considerations), AT&T may access the subscriber's inside wire by the following means:
 - 4.2.1.1. AT&T may choose to connect directly to the end-user's inside wire at the PACIFIC NID at no charge. Should AT&T request PACIFIC to disconnect its loop from the end user's inside wire, PACIFIC would charge AT&T a Non Recurring Charge (NRC) as set forth in Attachment 8. PACIFIC will perform any upgrades or rearrangements, other than loop disconnection (as addressed in the previous sentence) required by AT&T at the time and materials rate set forth in Attachment 8.
 - 4.2.1.2. If AT&T does not choose to connect directly to the end-user's inside wire at the PACIFIC NID, AT&T must establish the connection to PACIFIC's NID through an adjoining NID deployed by AT&T.
 - 4.2.1.3. With the customer's permission, either Party may remove the inside wire from the other Party's NID and connect that wire to that Party's own NID.
- 4.2.2. In no case shall AT&T remove or disconnect PACIFIC's Loop facilities from PACIFIC's NIDs, enclosures, or protectors.
- 4.2.3. In no case shall AT&T remove or disconnect ground wires from PACIFIC's NIDs, enclosures, or protectors.
- 4.2.4. In no case shall AT&T remove or disconnect NID modules, protectors, or terminals from PACIFIC's NID enclosures.
- 4.2.5. Maintenance and control of premises wiring (inside wire) is the responsibility of the subscriber. The end user subscriber must resolve any conflicts between service providers for access to the subscriber inside wire.
- 4.2.6. Due to the wide variety of NID enclosures and outside plant environments, PACIFIC and AT&T will cooperate to implement this Section 4.2.

4.3. TECHNICAL REQUIREMENTS

- 4.3.1. PACIFIC's NID shall provide an accessible point of interconnection for the subscriber-owned inside wiring, for PACIFIC's facilities, for the Distribution Media and/or cross

connect to AT&T's NID, and shall maintain a connection to ground.

4.3.2. PACIFIC's NID shall be capable of transferring electrical analog or digital signals between the subscriber's inside wiring and the Distribution Media and/or cross connect to AT&T's NID, consistent with the NID's function at the Effective Date of this Agreement.

4.3.3. Where a PACIFIC NID exists, PACIFIC shall provide the existing NID in working condition. AT&T may request PACIFIC to do additional work to the NID in accordance with Section 4.2.1.1.

4.4 ORDERING

4.4.1. AT&T will not be required to place an order to obtain access to PACIFIC's unbundled NID in order to directly connect to the unbundled NID.

4.4.2. PACIFIC does not keep records on NIDs and therefore does not have the ability to provide AT&T with access to NID inventory information.

4.5 GENERAL TERMS AND CONDITIONS

4.5.1 Protection of Facilities. In no case shall either Party connect to the NID or tie down its connecting facility directly over the other Party's facility without prior approval of the other Party and without conditioning having been performed to isolate each Party's network. Furthermore, in no instance shall either Party attach its connecting facility in any manner so as to cause voltage or its own dial tone to occur on the other Party's network.

4.5.2. Connector Blocks. In no case shall either Party remove or disconnect the other Party's loop facilities from the other Party's NIDs, enclosures, or protectors without receiving concurrence from the other Party. In no case shall either Party remove or disconnect ground wires from the other Party's NIDs, enclosures, or protectors. In no case shall either Party remove or disconnect NID modules, protectors, or terminals from the other Party's NID enclosures.

4.5.3. Drops. Either Party shall be permitted to secure its drop facility to its NID by grounding it in an appropriate manner. Upon

disconnection of service to the end user customer, either Party may leave its drop in place until another LEC or CLEC needs access to the NID as covered in 4.2.1.1.

- 4.5.4. Gaining Access to the NID. The Parties each acknowledge and agree that a special tool is necessary for access to PACIFIC's side of the NID. Neither Party shall attempt to access any type of NID without the proper tool, and any party accessing the NID, protector, connector block, or any other form of NID, shall exercise reasonable care and sound technician practices so as to avoid damage to the NID.

5. LOOPS

5.1. GENERAL TERMS AND CONDITIONS

- 5.1.1. The terms Loops and Links are synonymous.
- 5.1.2. Definition. Unbundled Local Loop (Loop) is defined as the Local loop network element, as set forth in FCC Rule 51.319. The Loop is defined as a transmission path that extends from the main distribution frame (DSX-panel or functionally comparable piece of equipment) in the subscriber's serving End Office to the demarcation point. The demarcation point is defined as the point where PACIFIC's control ends in or at the subscriber's premises, and the subscriber's control (or, in the case of some multiunit premises, the landlord's control) of the wire begins. The demarcation point is defined by control; it is a point where PACIFIC's and an end user's responsibilities meet. The Loop shall include the use of all test access functionality, including, without limitation, smart jacks, for both voice and data. The actual Loop transmission facilities used to provide a Loop may utilize any of several technologies.
- 5.1.3. Use and Suitability of Loop Service. Unbundled Loops may not be used to provide any service that would degrade or otherwise adversely affect PACIFIC's network services. AT&T shall use its good faith reasonable efforts to prevent its use of an unbundled Loop purchased from PACIFIC from degrading or otherwise adversely affecting network services of other CLECs that are interconnected with PACIFIC's network. PACIFIC shall use its good faith reasonable efforts to prevent other CLECs interconnected with PACIFIC's network from degrading or otherwise adversely affecting an unbundled Loop purchased by AT&T from PACIFIC.

- 5.1.4. The unbundled Loop element includes any equipment actually in place on the Loop, such as a load coil, to facilitate transmission in the voice band. Such equipment shall be considered to be part of the Loop.
 - 5.1.4.1. Consistent with the FCC *UNE Remand Order*, PACIFIC is not required to unbundle DSLAM equipment except in one limited circumstance as follows: PACIFIC must provide AT&T with access to unbundled packet switching in situations in which PACIFIC has placed its DSLAM in a remote terminal. However, PACIFIC will be relieved of this unbundling obligation if it permits AT&T to collocate its DSLAM in PACIFIC's remote terminal, on the same terms and conditions that apply to its own DSLAM. To the extent that an affiliate of PACIFIC deploys DSLAM equipment in a remote terminal that the affiliate has acquired from PACIFIC, the affiliate shall comply with the FCC's unbundling obligations with respect to the DSLAM equipment so acquired.
 - 5.1.4.2. As advances in technology allow for as yet unknown equipment to be deployed on the Loop facility to improve the Loop's voice or data transmission capabilities, and PACIFIC elects to deploy such technology advancements, PACIFIC will make this technology available to AT&T as part of the unbundled Loop element.
- 5.1.5. PACIFIC shall make Loops in its network available on an unbundled basis regardless of the transmission technology used to deliver the Loop to the central office.
- 5.1.6. Liability
 - 5.1.6.1. Each Party, whether AT&T or PACIFIC, agrees that should it cause any non-standard xDSL technologies to be deployed or used in connection with or on PACIFIC facilities, the Party ("Indemnifying Party") will compensate the other Party for actual costs it incurs, as a result of the Indemnifying Party's use of non-standard xDSL technology, causing damage, service interruption, DSL service degradation, or damage to the other Party's ("Indemnitee") facilities. Non-

standard DSL technology is a DSL technology not authorized in section 5 of Attachment 6 of this Agreement.

- 5.1.6.2 For any DSL technology, AT&T's use of any PACIFIC Network Element, or of its own equipment or facilities in conjunction with any PACIFIC Network Element, will not materially interfere with or impair service over any facilities of PACIFIC, its affiliated companies or connecting and concurring carriers involved in PACIFIC's services, cause damage to PACIFIC's plant, impair the privacy of any communications carried over PACIFIC's facilities or create hazards to employees or the public. Upon reasonable written notice and after a reasonable opportunity to cure, PACIFIC may discontinue or refuse service if AT&T violates this provision, provided that such termination of service will be limited to AT&T's use of the element(s) causing the violation. PACIFIC will not disconnect the elements causing the violation if, after receipt of written notice and opportunity to cure, AT&T demonstrates that its use of the Network Element is not the cause of the network harm. If AT&T does not believe that PACIFIC has made a sufficient showing of harm, or if AT&T contests the basis for the disconnection, either Party must first submit the matter to dispute resolution under the Dispute Resolution Procedures set forth in Attachment 3 of this Agreement. Any claims of network harm by PACIFIC must be supported with specific and verifiable supporting information.

5.1.7. Indemnification

- 5.1.7.1. Covered Claim: Each Party will indemnify, defend and hold harmless the other Party from any claim for damages caused by the Indemnifying Party's use of non-standard xDSL technology in connection with or on PACIFIC's facilities, including but not limited to direct, indirect or consequential damages, made against Indemnitee by any third party telecommunications service provider or telecommunications user. Non-standard DSL technology is a DSL technology not authorized in Section 5 of Attachment 6 of this Agreement.

5.1.7.2. Indemnification hereunder shall be pursuant to the terms of Section 11 of the Preface (General Terms and Conditions) to this Agreement.

5.2. TYPES OF LOOPS/LINKS

- 5.2.1. PACIFIC shall allow AT&T access to the following Loops in accordance with the terms and conditions of this Attachment 6:
- 5.2.2. 2-Wire or 4-wire Analog Basic Link. This PACIFIC unbundled Network Element is Plain Old Telephone (POTS) grade two-wire or 4-wire circuit or equivalent voice frequency channel. This loop supports analog transmission of 300-3000 Hertz (Hz) with loss no greater than 8.0 dB measured at 1004 Hz with 900 ohms at the central office POI and 600 ohms at the MPOE. In addition, coin supervision and ground start signaling options are available.
- 5.2.3. 2-Wire or 4-wire Analog (Assured) Link. The PACIFIC unbundled Network Element (2-wire or 4 wire) Analog (Assured) Link is a voice frequency channel that supports analog transmission of 300-3000 Hertz ("Hz"). The loop will have a loss no greater than 5.5db measured at 1004 Hz with 900 ohms at the central office POI and 600 ohms at the MPOE.
- 5.2.4. 4-Wire Digital (1.544 MBPS Capable) Link. This PACIFIC unbundled Network Element (4-wire) is a 1.544 MBPS capable Link which is an upgrade to the Basic Link and will terminate on a smart jack. It will be conditioned with or without digital repeaters.
- 5.2.5. 2-wire ISDN digital Loop supports BRI ISDN as well as IDSL technology that will conform to ANSI standard T1.601. This Loop provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 KBPS digital services using the ISDN 2B1Q line code.
- 5.2.6. An Enhanced Extended Link (EEL) consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The EEL allows AT&T to serve a customer by extending a customer's loop from the end office serving that customer to a different end office in which AT&T is already collocated. Where AT&T requests conversion of special access to an EEL, the EEL will only be available to AT&T upon terms and conditions consistent with the FCC's when AT&T provides a significant amount of local exchange service, as defined by the

FCC in Supplemental Order Clarification, *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-8, FCC 00-183 (rel. June 2, 2000); Section 22.

5.2.7. [Intentionally Omitted]

5.2.8. DSL-Capable Loops

5.2.8.1. The term digital subscriber line (DSL) describes various technologies and services. PACIFIC unbundled DSL loop offerings are set forth below for AT&T's use in conjunction with its desired DSL technologies and equipment to provision DSL services to its end-user customers. The Parties will comply with the FCC's rules on spectrum compatibility and management that enable the reasonable and safe deployment of advanced services prior to the development of industry standards. In accordance with the FCC's *Advanced Services Order*, PACIFIC shall provide AT&T with nondiscriminatory access to PACIFIC's spectrum management procedures and policies. PACIFIC shall make equally available to AT&T the procedures and policies that PACIFIC uses in determining what services can be deployed, so that AT&T can independently and expeditiously determine what services and technologies it can deploy within PACIFIC's service area.

5.2.8.2. [Intentionally omitted]

5.2.8.3. All PACIFIC Central Offices support the provisioning of DSL-capable Loops.

5.2.8.4. HDSL-capable Loop – an HDSL-capable Loop is a basic Loop (2 or 4-wire) without any data transmission degrading equipment (e.g. load coils, bridge taps). The Loop's electrical characteristics will permit the transmission of communications both within the voice band and in frequency ranges above the voice band. PACIFIC shall certify an HDSL-capable Loop as capable of supporting HDSL data service without undue spectral interference.

5.2.8.5. ADSL-capable Loop – an ADSL-capable Loop is a basic loop (2-wire) provisioned on copper facilities,

without any data transmission degrading equipment (e.g. load coils, bridge taps). This loop has a physical distance below 18,000 feet such that the Loop's electrical characteristics will permit the transmission of communications both within the voice band and in frequency ranges above the voice band. PACIFIC must certify the ADSL-capable loop as capable of supporting the ADSL data service without undue spectral interference.

5.2.8.6. All loops listed in Sections 5.2.8.7 through 5.2.8.12 below support technologies that conform to the current ANSI draft standard for spectrum management T1E1.4/99-002(R4). AT&T's transmission rate over these DSL-Capable Loops shall not be limited, except as may be required to conform to the total power, spectrum, transverse balance, and other parameters set forth in the ANSI draft standard. Each PSD referenced below is intended to include all parameters of its representative Spectrum Management Class, as found in the ANSI draft standard. PACIFIC and AT&T recognize that ANSI's current spectrum management classes and PSDs are in draft form and that as ANSI's standards become final, all Parties will adopt the final standards.

5.2.8.7. PSD Class #1 Capable Loop supports:

5.2.8.7.1. 2-Wire Digital "ISDN Digital Subscriber Line" (IDSL) technology:--See current 2-Wire Digital Loop offering (which complies with ANSI standard T1.601), as found in Appendix A of this Agreement.

5.2.8.7.2. 2-Wire Analog (copper only facilities) Loop is used at some operating speeds to provision "Symmetric Digital Subscriber Line" (SDSL): Loop Qualification and optional conditioning as described below are applicable to this 2-Wire VLS capable loop for which a copper only facility is ordered.

5.2.8.8. PSD Class #2 Capable Loop - 2-Wire PSD Class #2 capable loop may be used to support the deployment of any DSL equipment as referenced in 5.2 above.

Loop Qualification and optional conditioning as described below are applicable to the PSD #2 capable loop.

5.2.8.9. PSD Class #3 Capable Loop supports:

- 5.2.8.9.1. 2-Wire PSD Class #3 capable loop may be used to support the deployment of any DSL equipment as referenced in 5.2 above including 2-wire HDSL technologies. Loop Qualification and optional conditioning as described below are applicable to the PSD #3 capable loop.
- 5.2.8.9.2. 4-Wire PSD Class #3 capable loop may be used to support the deployment of any DSL equipment as referenced in 5.2 above including 4-wire HDSL technologies. Loop Qualification and optional conditioning as described below are applicable to the PSD #3 capable loop.
- 5.2.8.10. PSD Class #4 Capable Loop – 2-Wire PSD Class #4 capable loop may be used to support the deployment of any DSL equipment as referenced in 5.2 above including 2-wire HDSL 2 technologies. Loop Qualification and optional conditioning as described below are applicable to the PSD #4 capable loop..
- 5.2.8.11. PSD Class #5 2-Wire Capable Loop - 2-Wire PSD Class #5 capable loop may be used to support the deployment of any DSL equipment transmission of ADSL technologies which comply with current national standards (ANSI T1.413-1998). Current national standard provides for the use of echo cancellation in some situations. Loop Qualification and optional conditioning as described below are applicable to the PSD #5 capable loop.
- 5.2.8.12. PSD Class #7 2-Wire Capable Loop – 2-Wire PSD Class #7 capable loop may be used to support the deployment of any DSL equipment as referenced in 5.2 above. Loop Qualification and optional conditioning as described below are applicable to the PSD Class #7 capable loop.

5.2.8.13. Other Loop Technologies Presumed Capable of Deployment:

5.2.8.13.1. In addition to DSL-capable loops referenced in Sections 5.2.8.4 through 5.2.8.12 above, PACIFIC shall make available to AT&T the following loop technologies presumed capable of deployment pursuant to Section 67 of the FCC's *Advanced Services Order*:

5.2.8.13.1.1. any loop technology that complies with industry standards T1.601, T1.413 or TR28;

5.2.8.13.1.2. any technology that any carrier has successfully deployed, without significantly degrading the performance of other services, and

5.2.8.13.1.3. any technology that the FCC, any state commission or an industry standards body has approved.

5.2.8.13.2. PACIFIC may not deny a request by AT&T to deploy loop technology that is presumed capable for deployment, unless PACIFIC demonstrates to the Commission that the deployment of the particular technology within PACIFIC's network will significantly degrade the performance of other advanced services or traditional voice band services. In addition, PACIFIC and AT&T may mutually agree to deploy new technology that exceeds industry standards.

5.2.8.14. If AT&T requests a new technology presumed capable of deployment under Section 5.2.8.13 for which PACIFIC does not have an existing supporting loop as defined above, PACIFIC will provide a loop capable of supporting the new technology for AT&T as follows:

5.2.8.14.1. If the new technology, presumed capable of deployment, requires the use of a 2-wire or 4-

wire loop that is materially the same or the same with loop conditioning as described above, then PACIFIC will provide AT&T such loop. This loop will be capable of supporting the new technology at the same rates listed for the appropriate 2-wire and 4-wire loops and associated loop conditioning as needed. PACIFIC will supply AT&T with the appropriate ordering procedures within fifteen (15) business days of AT&T's request for a loop capable of supporting the new technology.

5.2.8.14.2. If the new technology presumed capable of deployment requires a materially different loop type from the existing 2-wire or 4-wire loops defined above (e.g. different loop design, conditioning, spectrum impact, etc.), then AT&T and PACIFIC shall expend diligent efforts to arrive at an agreement as to the rates, terms and conditions for such loop. If negotiations fail, disputes between the Parties concerning the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology shall be resolved pursuant to the dispute resolution process provided for in Attachment 3.

5.2.8.15. New Loop Technologies Other than Those Presumed Capable of Deployment

5.2.8.15.1 AT&T may deploy new technologies that do not conform to industry standards T1.601, T1.413 and TR28 or have not yet been approved by a standards body (or otherwise authorized by the FCC, any state commission or which have not been successfully deployed by any carrier without significantly degrading the performance of other services) if AT&T can demonstrate to the Commission that the particular technology will not significantly degrade the performance of other advanced services or traditional voice band services. In this situation, there would be no presumption in favor of deployment and the

burden would be on the AT&T to make the appropriate showing.

- 5.2.8.15.2. If it is demonstrated that the new technology will not significantly degrade the performance of other advanced services or traditional voice-based services, PACIFIC will provide a loop to support the new technology for AT&T under the same terms and conditions as set forth in Sections 5.2.8.14.1 and 5.2.8.14.2 above.
- 5.2.8.15.3. For such new DSL technologies deployed under Sections 5.2.8.14.1 and 5.2.8.14.2 above, once national ANSI standards are adopted, PACIFIC and AT&T will comply with the new standards within the time frame specified by ANSI or as otherwise agreed by the Parties.
- 5.2.8.15.4. Until such time as the FCC defines the term more precisely, "significantly degrade" is defined as an action that noticeably impairs a service from a user's perspective. FCC's *Advanced Services Order*, Paragraph 66.

5.3. PRE-QUALIFICATION OF LOOPS

- 5.3.1. PACIFIC will make available the capability for AT&T to pre-qualify loops on a mechanized basis through Verigate/DataGate OSS interfaces. The pre-qualification process will permit a database query, which will result in the retrieval of an indicator with limited loop length and facility data. There is no charge for pre-qualification.

5.4. LOOP QUALIFICATION

- 5.4.1. PACIFIC will use a loop qualification process (Loop Qualification) in connection with provisioning DSL-Capable Loops requiring spectrum management and "copper only" facilities with specific physical characteristics. The Loop Qualification process examines the available loop facilities for suitability in terms of physical characteristics and spectrum compatibility based upon the conditions set forth in industry standards. The Loop Qualification process provides loop make-up data, such as loop length and